



7710-12

POSTAL SERVICE

39 CFR Part 241

Relocating Retail Services; Adding New Retail Service Facilities

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to revise its current rules concerning the expansion, relocation, and construction of Post Offices™ to clarify its procedures and to require more information about certain types of projects to be provided earlier in the planning phase. Under the revised rule, the Postal Service will notify communities and officials, and solicit and consider their input, regarding proposals to relocate retail services or add a new retail services facility. The revised rule will also require the Postal Service to provide information about the anticipated new location for relocated services, or the new retail services facility, when the Postal Service first gives notice of the proposal.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Please submit written comments by email to USPSFAC@usps.gov, with the subject heading “241.4 Rulemaking,” or by mail to Angie Mitchell, U.S. Postal Service, 475 L’Enfant Plaza, SW, Room 6611, Washington, DC, 20260.

FOR FURTHER INFORMATION CONTACT: Richard Hancock, Real Estate Specialist, U.S. Postal Service, at *Richard.A.Hancock2@usps.gov* or 919-420-5284.

SUPPLEMENTARY INFORMATION:

Background

The Postal Service proposes to revise 39 CFR 241.4 to clarify its procedures and to require the Postal Service to provide more information about certain types of projects earlier in the planning phase. The current rule prescribes procedures by which the Postal Service notifies communities and local officials of certain types of proposed facility projects, and solicits and considers the community's input before making a final decision to expand an existing retail services facility, relocate retail services, or construct a new building to provide retail services. Under the proposed rule, the Postal Service will continue to notify communities and officials, and to solicit and consider input regarding proposals to relocate retail services or to add a new retail services facility. Additionally, however, the revised rule will enhance transparency by requiring the Postal Service to provide information about the anticipated new location for the relocated services, or for the new retail services facility, when the Postal Service first engages with the community and officials concerning the proposal.

When the Postal Service published the current rule in 1998 (63 FR 46656), the Postal Service was adding space to its facilities network to serve an expanding customer base, often in suburban areas, and to support a growing volume of mail. Exemplifying the focus at that time on adding space, the current rule calls for the Postal Service to emphasize that in meeting a need for increased space, the first priority is to

expand the existing facility, the second priority is to find an existing building in the same area as the current facility, and the third option is to build on a new site that will be either owned or leased. 39 CFR 241.4(c)(1)(ii).

Today, the Postal Service focuses on innovating to adapt to a dynamic marketplace that has changed dramatically since the current rule's publication. For many years now, Postal Service customers have been decreasing their demand for the Postal Service's primary service category, First-Class Mail[®], turning instead to electronic communications for correspondence, bill deliveries and payments, and other communications and transactions. Demand for First-Class Mail service has also declined dramatically due to the ongoing effects of the Great Recession. Postal Service operations are self-funding and not supported by tax dollars. To be self-sustaining, and meet its universal service obligation, the Postal Service must provide adequate and affordable postal services efficiently and economically. The Postal Service is therefore responding to the decreasing demand for its First-Class Mail services and to the corresponding loss of revenue by optimizing its facilities network, often by relocating out of oversized spaces into right-sized spaces. Through experience with applying the current rule to relocations, the Postal Service determined that it could improve the rule by clarifying its terms and applicability, by focusing the rule on the types of projects that are most likely to be sensitive to a community, and by increasing transparency through providing more information about those projects earlier in the planning phase. Accordingly, the Postal Service proposes to revise the rule in several ways.

Proposed Modifications

Although the current rule applies only to “customer service facilities,” the rule does not define “customer service facility.” The revised rule adds definitions to clarify its terms and applicability, including a definition for “retail service facility,” a term the revised rule uses instead of “customer service facility” to define the type of facility to which the rule applies.

With regard to relocations of retail services, the current rule calls for the Postal Service to conduct community outreach in a two-step process. First, the Postal Service solicits and considers input from the community and local officials on whether to relocate. Second, if the Postal Service decides to pursue the relocation, then the Postal Service solicits and considers input on selection of the relocation site. The Postal Service believes it can enhance its community outreach by providing information about the planned relocation and the anticipated relocation site at the same time when it first engages with the community and officials regarding a proposed relocation. Accordingly, when the Postal Service meets with the community to discuss the proposed relocation, the revised rule specifically calls for the Postal Service to also identify the site or area to which the Postal Service anticipates relocating the retail services. Further, while the current rule allows appeals of the relocation decision, and allows the community and officials to comment on the proposed new sites, it does not provide an avenue to appeal the site selection. By consolidating the discussions of relocation and site selection, the revised rule bolsters the community input process by providing a process to appeal both the relocation and site selection proposals and permits the Postal Service to deliver its final decision in a timelier manner.

The current rule also requires soliciting and considering community input for construction of a new building for a retail service facility, and for expansion of an existing retail service facility. However, the current rule does not require community input when the Postal Service leases space for a new retail services facility, although in practice the Postal Service commonly solicits and considers input in those situations. Based on experience, the Postal Service believes communities often are concerned about a proposal to add a retail services facility, regardless of whether the Postal Service plans to build a new building or to lease space. In contrast to adding a retail services facility or relocating retail services, an expansion of a retail service facility does not raise the same concerns because the retail services remain in place. Further, as the Postal Service adapts to a changing marketplace, it forecasts, at most, an increasingly rare need to expand existing retail services sites in a manner significantly affecting surrounding communities. Conversely, it does anticipate leasing new sites as needed to provide retail services in additional facilities. Accordingly, the revised rule will not apply to “expansions,” but will broaden and revise the “new construction” category to require community input whenever the Postal Service adds a new retail service facility to a community, whether as a new building or as a leased space. Therefore, the revised rule will expand opportunities for community input for those projects.

When community members or officials appeal a decision, the current rule calls for the “Vice President, Facilities” to determine those appeals. Although the Vice President, Facilities is not an approving official for initial project decisions to which the current rule applies, the Postal Service decided to revise the rule to avoid concerns that the same official is approving an initial project and determining appeals for the project.

Therefore, the revised rule permits the Postal Service to designate an official other than the Vice President, Facilities to determine such appeals.

The current rule excuses community input for temporary and emergency relocations, but limits such relocations to 180 days without distinguishing between temporary and emergency relocations. While the 180-day limit may be appropriate for temporary relocations, it is unnecessarily arbitrary for emergency relocations. The revised rule distinguishes temporary additions and relocations (e.g., for holidays, or special events) from emergency relocations (e.g., due to earthquakes, fire, or lease terminations). It retains the 180-day limit for temporary additions and relocations, while substituting a requirement for community input “as soon as prudent” following emergency relocations. The revised rule also adds a process for soliciting and considering community input following an emergency relocation.

Several years after the Postal Service published the current rule, Congress enacted the Postal Accountability and Enhancement Act (PAEA) (Pub. L. 109–435, 120 Stat 3198). As added by PAEA, 39 U.S.C. 409(f) sets forth requirements for the Postal Service when it constructs or alters a building, including requirements to consult with local officials concerning local zoning and building code requirements. Those requirements overlap with the current rule’s requirements at 39 CFR 241.4(f), but the two sets of requirements are not entirely consistent. Because the subsequently enacted PAEA applies to all Postal Service projects, not just projects subject to the current rule, the revised rule will eliminate 39 CFR 241.4(f) to allow the Postal Service and local communities to look to a single set of requirements, as set forth in PAEA, for all Postal Service projects.

Last, the revised rule clarifies in 39 CFR 241.4(d) that it does not add to, reduce, or otherwise modify the Postal Service's legal obligations or policies for compliance with other laws and regulations. This clarification preserves and strengthens the original intent of the current rule.

List of Subjects in 39 CFR Part 241

Organization and functions (Government agencies), Retail service facilities.

Although exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites public comment at the above address and will consider any comments received before issuing a final rule.

Accordingly, the Postal Service proposes to revise 39 CFR 241.4 as set forth below.

PART 241 – ESTABLISHMENT CLASSIFICATION, AND DISCONTINUANCE

1. The authority citation for 39 CFR part 241 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 403, 404, 410, 1001.

2. Revise § 241.4 to read as follows:

§ 241.4 Relocating retail services; adding new retail service facilities.

(a) *Application.* (1) Except as otherwise provided below, this section applies when the Postal Service proposes either to relocate all retail services from a retail service facility to a separate existing physical building; or to add a new retail service facility for a community. As used in this section, “retail services” means the single-piece

mail services offered to individual members of the public on a walk-in basis at a retail service facility, and a “retail service facility” is a physical building where Postal Service employees provide such retail services.

(2) This section does not apply to temporary additions of retail service facilities or to temporary or emergency relocations of retail services. The Postal Service may use temporary additions or relocations when necessary to support Postal Service business for holidays, special events, or overflow business. Temporary additions and relocations normally will be limited to 180 days in duration. Any additional incremental time periods of up to 180 days each must be approved by the Vice President, Facilities or his designee. The Postal Service may use emergency relocations when the Postal Service determines relocation is required to protect Postal Service business due to events such as earthquakes, floods, fire, potential or actual OSHA violations, lease terminations or expirations, a lessor exercising a right to relocate the Postal Service’s premises, safety factors, environmental causes, other business disrupting events, or as necessary to protect employees, customers, or the sanctity of the mail. Following an emergency relocation, as soon as the Postal Service determines it is prudent to identify the long term location for the retail services, the Postal Service will make an initial decision whether to remain in the emergency relocation site on a long term basis, to return to the original retail service facility (if feasible), or to relocate to another site. After such initial decision, the Postal Service will follow the process in paragraph (c) of this section with respect to collecting and considering community input on a proposal to implement such initial decision.

(b) *Purpose.* The purpose of this section is to provide opportunities for community members and their elected local officials to give input to the Postal Service concerning a proposal to which this section applies (a “proposal”), and for the Postal Service to consider that input in determining whether to proceed with, modify, or cancel the proposal.

(c) *Collect and consider community input.* When the Postal Service makes a proposal, a Postal Service representative will take the following steps:

(1) *Identify the community and engage local elected officials.* The Postal Service representative will identify the community the Postal Service anticipates would be affected by implementing the proposal, taking into account such factors as the Postal Service determines are appropriate for the proposal. The Postal Service representative then will deliver to one or more local elected public officials a written outline of the proposal and offer to discuss the proposal with them. The Postal Service representative may elect to conduct such discussion either in person or using any other appropriate communication tool, including electronic communications. If the officials accept the offer, then the Postal Service representative will identify the need and outline the proposal that is under consideration to meet it, explain the process by which the Postal Service will solicit and consider input from the affected community, and solicit input from the local officials regarding the proposal.

(2) *Notify the community and arrange for public presentation.* The Postal Service will send an initial news release outlining the proposal to one or more news media serving the community and, if the community has a retail service facility, then the Postal Service also will post a copy of the information given to local officials or the news

release in the public lobby of that retail service facility. Additionally, the Postal Service representative will ask the local officials to place a Postal Service presentation of the proposal on the regular agenda of the next scheduled public meeting, or will schedule a separate Postal Service public meeting concerning the proposal. At least 15 days prior to the meeting, the Postal Service will advertise the date, time, and location of the public meeting in a local news medium and, if the community has an existing retail service facility, then the Postal Service also will post in the public lobby of that retail service facility a notice of the date, time, and location of the public meeting.

(3) *Present the proposal to the community.* At the public meeting, the Postal Service will identify the need, e.g., for relocating retail services or adding a retail service facility, outline the proposal to meet the need, invite questions, solicit written input on the proposal, and provide an address to which the community and local officials may send written comments and appeals of the proposal for a period of 30 days following the public meeting. Under exceptional circumstances that would prevent a Postal Service representative from attending or conducting a public meeting to present the proposal within a reasonable time, the Postal Service, in lieu of a public meeting, may give customers within the community written notification of the proposal by mail or by posting a notice of the proposal in the retail service facility that would be affected by the proposal, seeking their written input on the proposal and providing an address to which the community and local officials may send written comments and appeals of the proposal during the 30 days following such notification. An example of exceptional circumstances would be a proposal that would be implemented in a sparsely populated

area remote from the seat of local government or any forum where the public meeting reasonably could be held.

(i) If the proposal concerns relocation, then the Postal Service will:

(A) Discuss the reasons for relocating;

(B) Identify the site or area to which the Postal Service anticipates relocating the retail services; and

(C) Describe the anticipated size of the retail service facility for the relocated retail services, and the anticipated services to be offered at such site or in such area.

(The Postal Service may identify more than one potential relocation site or area, for example, when the Postal Service has not selected among competing sites.)

(ii) If the proposal concerns adding a new retail service facility for a community, then the Postal Service will:

(A) Discuss the reasons for the addition;

(B) Identify the site or area to which the Postal Service anticipates adding the retail service facility;

(C) Describe the anticipated size of the added retail service facility, and the anticipated services to be offered; and

(D) Outline any anticipated construction (e.g., of a stand-alone building or interior improvements to an existing building (or portion thereof) that will be leased by the Postal Service). (The Postal Service may identify more than one potential site or area, for example, when the Postal Service has not selected among competing sites.)

(4) *Consider comments and appeals.* After the 30 day comment and appeal period, the Postal Service will consider the comments and appeals received that identify reasons why the Postal Service's proposal (e.g., to relocate to the selected site, or to add a new retail service facility) is, or is not, the optimal solution for the identified need. Following such consideration, the Postal Service will make a final decision to proceed with, modify, or cancel the proposal. The Postal Service then will inform local officials in writing of its final decision and send an initial news release announcing the final decision to local news media. If the community has a retail service facility, then the Postal Service also will post a copy of the information given to local officials or the news release in the public lobby of that retail service facility. The Postal Service then will implement the final decision.

(5) *Subsequent site identification.* After the public meeting under paragraph (c)(3) of this section, if the Postal Service decides to use a site or area that it did not identify at the public meeting, and this Section applies with respect to such new site or area, then the Postal Service will undertake the steps in paragraphs (c)(2) through (4) of this section with regard to the new site or area.

(d) *Effect on other obligations and policies.* Nothing in this section shall add to, reduce, or otherwise modify the Postal Service's legal obligations or policies for compliance with independent policies or obligations of the Postal Service that are not dependent upon a relocation or addition of a retail service facility. These include:

(1) Section 106 of the National Historic Preservation Act, 16 U.S.C. 470, Executive Order 12072, and Executive Order 13006;

(2) 39 U.S.C. 404(d) and 39 CFR 241.3; and

(3) 39 U.S.C. 409(f).

Stanley F. Mires,

Attorney, Federal Requirements.

[FR Doc. 2014-25403 Filed 10/24/2014 at 8:45 am; Publication Date: 10/27/2014]